

107TH CONGRESS
2^D SESSION

H. R. 2880

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2002

Received; read twice and referred to the Committee on Indian Affairs

AN ACT

To amend laws relating to the lands of the enrollees and lineal descendants of enrollees whose names appear on the final Indian rolls of the Muscogee (Creek), Seminole, Cherokee, Chickasaw, and Choctaw Nations (historically referred to as the Five Civilized Tribes), and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Five Nations Indian Land Reform Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. Definitions.

TITLE I—RESTRICTIONS; REMOVAL OF RESTRICTIONS

Sec. 101. Restrictions on real property.

Sec. 102. Reinvestment of proceeds from condemnation or conveyance of re-
 stricted property.

Sec. 103. Trust funds.

Sec. 104. Period of restrictions.

Sec. 105. Removal of restrictions.

Sec. 106. Exemptions from prior claims.

Sec. 107. Fractional interests.

TITLE II—ADMINISTRATIVE APPROVAL OF CONVEYANCES, PARTI-
 TIONS, LEASES, AND MORTGAGES; MANAGEMENT OF MINERAL
 INTERESTS

Sec. 201. Approval authority for conveyances and leases.

Sec. 202. Approval of conveyances.

Sec. 203. Reimposition of restrictions on restricted property conveyed to Indian
 housing authorities.

Sec. 204. Administrative approval of partition in kind.

Sec. 205. Surface leases.

Sec. 206. Secretarial approval of mineral leases or agreements.

Sec. 207. Management of mineral interests.

Sec. 208. Mortgages.

TITLE III—PROBATE, HEIRSHIP DETERMINATION, AND OTHER
 PROCEEDINGS AFFECTING TITLE TO RESTRICTED PROPERTY

Sec. 301. Actions affecting restricted property.

Sec. 302. Heirship determinations and probates.

Sec. 303. Actions to cure title defects.

Sec. 304. Involuntary partitions of restricted property.

Sec. 305. Requirements for actions to cure title defects and involuntary parti-
 tions.

Sec. 306. Pending State proceedings.

TITLE IV—MISCELLANEOUS

- Sec. 401. Regulations.
- Sec. 402. Validation of certain transactions; savings clause.
- Sec. 403. Repeals.
- Sec. 404. Secretarial trust responsibility.
- Sec. 405. Representation by attorneys for the Department of the Interior.
- Sec. 406. Filing requirements; constructive notice.
- Sec. 407. Publication of designated officials.
- Sec. 408. Rule of construction.
- Sec. 409. Transmission of power from Indian lands in Oklahoma.
- Sec. 410. Authorization of appropriations.
- Sec. 411. Effective date.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Since 1970, Federal Indian policy has en-
 4 couraged Indian self-determination and economic
 5 self-sufficiency. The exercise of Federal instrumen-
 6 tality jurisdiction by the Oklahoma State courts over
 7 the Indian property that is subject to Federal re-
 8 strictions against alienation belonging to enrollees
 9 and descendants of enrollees whose names appear on
 10 the final Indian rolls of the Muscogee (Creek), Semi-
 11 nole, Cherokee, Chickasaw, and Choctaw Nations,
 12 historically referred to as the Five Civilized Tribes,
 13 but now referred to as the Five Nations, is incon-
 14 sistent with that policy.

15 (2) It is a goal of Congress to recognize the In-
 16 dian land base as an integral part of the culture and
 17 heritage of Indian people.

18 (3) The exercise of Federal instrumentality ju-
 19 risdiction by the courts of the State of Oklahoma

1 over conveyances and inheritance of restricted prop-
2 erty belonging to Individual Indians—

3 (A) is costly, confusing, and cumbersome,
4 and effectively prevents any meaningful Indian
5 estate planning, and unduly complicates the
6 probating of Indian estates and other legal pro-
7 ceedings relating to Individual Indians and
8 their lands; and

9 (B) has impeded the self-determination
10 and economic self-sufficiency of Individual Indi-
11 ans within the exterior boundaries of the Five
12 Nations.

13 **SEC. 3. PURPOSES.**

14 The purposes of this Act are as follows:

15 (1) To correct the disparate Federal treatment
16 of individual allotted lands of Individual Indians that
17 resulted from prior Federal legislation by equalizing
18 the Federal legislative treatment of restricted and
19 trust lands.

20 (2) To eliminate unnecessary legal and bureau-
21 cratic obstacles that impede the highest and best use
22 of restricted property belonging to Individual Indi-
23 ans.

24 (3) To provide for an efficient process for the
25 administrative review and approval of conveyances,

1 voluntary partitions, and leases, and to provide for
2 Federal administrative proceedings in testate and in-
3 testate probate and other cases that involve the re-
4 stricted property of Individual Indians, which con-
5 cern the rights of Individual Indians to hold and ac-
6 quire such property in restricted and trust status.

7 (4) To transfer to the Secretary the Federal in-
8 strumentality jurisdiction of the Oklahoma State
9 courts together with other authority currently exer-
10 cised by such courts over the conveyance, devise, in-
11 heritance, lease, encumbrance, and certain voluntary
12 partition actions involving restricted property be-
13 longing to such Individual Indians.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) FIVE NATIONS.—The term “Five Nations”
17 means the Cherokee Nation, the Chickasaw Nation,
18 the Choctaw Nation of Oklahoma, the Seminole Na-
19 tion of Oklahoma, and the Muscogee (Creek) Nation,
20 collectively, which were historically referred to as the
21 “Five Civilized Tribes”.

22 (2) INDIAN COUNTRY.—The term “Indian coun-
23 try” has the meaning given that term in section
24 1151 of title 18, United States Code, which includes

1 restricted property and trust property as such terms
2 are defined in this Act.

3 (3) INDIAN NATION.—The term “Indian Na-
4 tion” means one of the individual Five Nations re-
5 ferred to in paragraph (1).

6 (4) INDIAN TRIBE.—The term “Indian tribe”
7 has the meaning given that term in section 4(e) of
8 the Indian Self-Determination and Education Assist-
9 ance Act (25 U.S.C. 450b(e)).

10 (5) INDIVIDUAL INDIAN.—The term “Individual
11 Indian” means a member or citizen of one of the in-
12 dividual Five Nations referred to in paragraph (1),
13 an enrollee on the final Indian rolls of the Five Civ-
14 ilized Tribes, or an individual who is a lineal de-
15 scendant by blood of an Indian ancestor enrolled on
16 the final Indian rolls of the Five Civilized Tribes, re-
17 gardless of whether such person is an enrolled mem-
18 ber of one of the Five Nations.

19 (6) RESTRICTED PROPERTY.—(A) The term
20 “restricted property” means any right, title, or in-
21 terest in real property owned by an Individual In-
22 dian that is subject to a restriction against alien-
23 ation, conveyance, lease, mortgage, creation of liens,
24 or other encumbrances imposed by this Act and
25 other laws of the United States expressly applicable

1 to the property of enrollees and lineal descendants of
2 enrollees on the final Indian rolls of the Five Civilized Tribes.

4 (B) The term “restricted property” includes,
5 without limitation, those interests in the estate of a
6 decedent Individual Indian who died prior to the effective date of this Act that were, immediately prior
7 to the decedent’s death, subject to restrictions
8 against alienation imposed by the laws of the United
9 States but that had not, as of the effective date of
10 this Act—
11

12 (i) been the subject of a final order determining the decedent’s heirs and distributing the
13 restricted property issued by a State district
14 court or a United States district court;
15

16 (ii) been conveyed by heirs by deed approved in State district court;
17

18 (iii) been conveyed by heirs of less than
19 one-half degree of Indian blood with or without
20 State district court approval; or

21 (iv) been the subject of Secretarial approval of removal of restrictions.
22

23 (C) The term “restricted property” does not include
24 Indian trust allotments made pursuant to the

1 General Allotment Act (25 U.S.C. 331 et seq.) or
2 any other trust property.

3 (7) SECRETARY.—The term “Secretary” means
4 the Secretary of the Interior or the designee of the
5 Secretary of the Interior.

6 (8) TRUST PROPERTY.—The term “trust prop-
7 erty” means Indian property, title to which is held
8 in trust by the United States for the benefit of an
9 Individual Indian or an Indian Nation, provided that
10 such property was acquired in trust by the United
11 States under the authority of the Act of June 18,
12 1934 (25 U.S.C. 461 et seq.) (commonly known as
13 the “Indian Reorganization Act”) or the Act of June
14 26, 1936 (25 U.S.C. 501 et seq.) (commonly known
15 as the “Oklahoma Indian Welfare Act”), within the
16 boundaries of the State of Oklahoma.

17 **TITLE I—RESTRICTIONS;**
18 **REMOVAL OF RESTRICTIONS**

19 **SEC. 101. RESTRICTIONS ON REAL PROPERTY.**

20 (a) APPLICATION.—Beginning on the effective date
21 of this Act, all restricted property shall be subject to re-
22 strictions against alienation, conveyance, lease, mortgage,
23 creation of liens, or other encumbrances, regardless of the
24 degree of Indian blood of the Individual Indian who owns
25 such property.

1 (b) CONTINUATION.—

2 (1) IN GENERAL.—Any restricted property, in-
3 cluding any restricted property referred to in sub-
4 section (a), shall remain restricted property notwith-
5 standing the acquisition of such property by an Indi-
6 vidual Indian by inheritance, devise, gift, or ex-
7 change.

8 (2) WITH WAIVER.—Any restricted property,
9 including any restricted property referred to in sub-
10 section (a), shall remain restricted property upon the
11 acquisition of such property by an Individual Indian
12 by election to take at partition or by purchase, but
13 only if—

14 (A) prior to the execution of the deed
15 transferring such restricted property, the Indi-
16 vidual Indian who owned such property prior to
17 such election to take or purchase executes a
18 written waiver of his or her right to acquire
19 other property in restricted status pursuant to
20 section 102; and

21 (B) such restrictions appear in the deed
22 transferring such property to the Individual In-
23 dian electing to take at partition or purchasing
24 such property, together with certification on

SEC. 102. REINVESTMENT OF PROCEEDS FROM CONDEMNATION OR CONVEYANCE OF RESTRICTED PROPERTY.

(a) REQUIREMENT.—Upon the conveyance of the restricted property of an Individual Indian pursuant to this Act, or upon the conveyance or condemnation of such property pursuant to section 3 of the Act of March 3, 1901 (25 U.S.C. 357) or other Federal laws generally applicable to the condemnation of Indian trust or restricted property, the Secretary shall use any proceeds from such conveyance or condemnation to purchase from a willing seller other property designated by such Individual Indian, and such designated property shall be restricted property if—

(1) such proceeds were deposited into a segregated trust fund account under the supervision of the Secretary at the request of the Individual Indian;

(2) such Individual Indian provides a written statement to the Secretary for payment of all or a portion of such proceeds for purchase of property to be held in restricted status;

1 (3) such Individual Indian has not executed a
2 written waiver of his or her right to acquire other
3 property in restricted status pursuant to section
4 101;

5 (4) such restrictions appear in the conveyance
6 to the Individual Indian with certification by the
7 Secretary that the requirements of this section have
8 been met;

9 (5) such property is located within the State of
10 Oklahoma; and

11 (6) the Secretary determines that there are no
12 existing liens or other encumbrances which would
13 substantially interfere with the use of the property.

14 (b) FAIR MARKET VALUE IN EXCESS OF PRO-
15 CEEDS.—If the fair market value of any property des-
16 ignated under subsection (a) exceeds the amount of pro-
17 ceeds that are derived from the conveyance or condemna-
18 tion of such property, a specific tract of land within the
19 property shall be designated by the Individual Indian for
20 placement in restricted status. Such restrictions shall ap-
21 pear on the face of the deed with certification by the Sec-
22 retary describing that portion of the property which is sub-
23 ject to restrictions.

24 (c) RULE OF CONSTRUCTION.—The provisions of
25 subsections (a) and (b) of this section shall apply to the

1 reinvestment of proceeds derived from the conveyance or
2 condemnation of restricted property of an Individual In-
3 dian pursuant to the Act of March 2, 1931, as amended
4 by the Act of June 30, 1932 (25 U.S.C. 409a), where such
5 reinvestment occurs after the effective date of this Act.

6 **SEC. 103. TRUST FUNDS.**

7 (a) IN GENERAL.—All funds and securities held or
8 supervised by the Secretary derived from restricted prop-
9 erty or Individual Indian trust property on or after the
10 effective date of this Act, including proceeds from any con-
11 veyance or condemnation as provided for in section 102,
12 are deemed to be held in trust and shall remain subject
13 to the jurisdiction of the Secretary.

14 (b) USE OF FUNDS.—Funds, securities, and proceeds
15 described in subsection (a) may be released upon approval
16 or expended by the Secretary for the use and benefit of
17 the Individual Indians to whom such funds, securities, and
18 proceeds belong, under such rules and regulations as the
19 Secretary shall prescribe.

20 **SEC. 104. PERIOD OF RESTRICTIONS.**

21 Subject to the provisions of this Act that permit re-
22 strictions to be removed, the period of restriction against
23 alienation, conveyance, lease, mortgage, creation of liens,
24 or other encumbrances of restricted property and funds

1 belonging to Individual Indians, is hereby extended until
2 an Act of Congress determines otherwise.

3 **SEC. 105. REMOVAL OF RESTRICTIONS.**

4 (a) PROCEDURE.—

5 (1) APPLICATION.—An Individual Indian who
6 owns restricted property, or the legal guardian of a
7 minor Individual Indian or of an Individual Indian
8 who has been determined to be legally incompetent
9 by a court of competent jurisdiction (including a
10 tribal court), may apply to the Secretary for an
11 order removing restrictions on any interest in re-
12 stricted property owned by such Individual Indian.
13 The application shall be considered by the Secretary
14 only as to the tract, tracts, or severed mineral or
15 surface interest described in the application.

16 (2) CONSIDERATION OF APPLICATION.—Not
17 later than 90 days after the date on which an appli-
18 cation referred to in paragraph (1) is submitted to
19 the Secretary, the Secretary shall either issue the re-
20 moval order or disapprove the application.

21 (3) DISAPPROVAL BY VIRTUE OF MISSED DEAD-
22 LINE.—If the application referred to in paragraph
23 (1) is not approved within 90 days of submission to
24 the Secretary, the application shall be deemed to
25 have been disapproved pursuant to paragraph

1 (4)(B). Such disapproval of the application shall be
2 subject to review in accordance with the Administra-
3 tive Procedures Act (5 U.S.C. 701 et seq.), and the
4 Secretary's regulations governing administrative ap-
5 peals.

6 (4) DISAPPROVAL.—The Secretary shall dis-
7 approve an application pursuant to paragraph (2)
8 if—

9 (A) in the Secretary's judgment, the appli-
10 cant has been subjected to fraud, undue influ-
11 ence, or duress by a third party; or

12 (B) the Secretary determines it is other-
13 wise not in the Individual Indian owner's best
14 interest.

15 (b) REMOVAL OF RESTRICTIONS.—When an order to
16 remove restrictions becomes effective under subsection (a),
17 the Secretary shall issue a certificate describing the prop-
18 erty and stating that the Federal restrictions have been
19 removed.

20 (c) SUBMISSION OF LIST.—Not later than April 1 of
21 each year, the Secretary shall cause to be filed with the
22 county treasurer of each county in the State of Oklahoma
23 where restricted property is situated, a list of restricted
24 property that has lost its restricted status during the pre-
25 ceding calendar year in accordance with the provisions of

1 this Act. The Secretary shall also cause such list to be
2 filed in the appropriate land titles and records offices des-
3 ignated by the Secretary pursuant to section 406(a).

4 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
5 tion shall be construed to—

6 (1) abrogate valid existing rights to property
7 that is subject to an order to remove restrictions
8 under this section; and

9 (2) remove restrictions on any other restricted
10 property owned by the applicant.

11 **SEC. 106. EXEMPTIONS FROM PRIOR CLAIMS.**

12 Sections 4 and 5 of the Act of May 27, 1908 (35
13 Stat. 312, chapter 199), shall apply to all restricted prop-
14 erty.

15 **SEC. 107. FRACTIONAL INTERESTS.**

16 Upon application by an Individual Indian owner of
17 an undivided unrestricted interest in property of which a
18 portion of the interests in such property is restricted as
19 of the effective date of this Act, the Secretary shall forth-
20 with convert that unrestricted interest into restricted sta-
21 tus if all of the undivided interests in the property are
22 owned by Individual Indians as of the date of the applica-
23 tion under this section. The conversion into restricted sta-
24 tus shall be effective upon the date of filing of a restricted
25 form deed with the county clerk of the county where the

1 property is situated; provided that such deed must be exe-
2 cuted by the applicant and approved by the Secretary.

3 **TITLE II—ADMINISTRATIVE AP-**
4 **PROVAL OF CONVEYANCES,**
5 **PARTITIONS, LEASES, AND**
6 **MORTGAGES; MANAGEMENT**
7 **OF MINERAL INTERESTS**

8 **SEC. 201. APPROVAL AUTHORITY FOR CONVEYANCES AND**
9 **LEASES.**

10 The Secretary shall have exclusive jurisdiction to ap-
11 prove conveyances and leases of restricted property by an
12 Individual Indian or by any guardian or conservator of
13 any Individual Indian who is a ward in any guardianship
14 or conservatorship proceeding pending in any court of
15 competent jurisdiction, except that petitions for such ap-
16 provals that are filed in Oklahoma district courts prior to
17 the effective date of this Act shall be heard and adju-
18 dicated by such courts pursuant to the procedures de-
19 scribed in section 1 of the Act of August 4, 1947 (61 Stat.
20 731, chapter 458), as in effect on the day before the effec-
21 tive date of this Act, unless the Individual Indian, guard-
22 ian, or conservator dismisses the petition or otherwise ob-
23 jects to the conveyance or lease prior to final court ap-
24 proval.

1 **SEC. 202. APPROVAL OF CONVEYANCES.**

2 (a) PROCEDURE.—

3 (1) IN GENERAL.—The Secretary may approve
4 the conveyance of interests in restricted property by
5 an Individual Indian—

6 (A) after the property is appraised by the
7 Secretary;

8 (B) for an amount that is not less than 90
9 percent of the appraised value of the property;

10 (C) to the highest bidder through the sub-
11 mission to the Secretary of closed, silent bids or
12 negotiated bids; and

13 (D) upon the approval of the Secretary.

14 (2) APPROVAL OF DEED.—No deed conveying
15 an interest in restricted property shall be valid un-
16 less the Secretary's approval is endorsed on the face
17 of such deed.

18 (b) EXCEPTION.—

19 (1) IN GENERAL.—Notwithstanding subsection
20 (a)(2)(B), the Secretary may approve the conveyance
21 of restricted property, or any portion thereof, by an
22 Individual Indian to any of the individuals described
23 in paragraph (2) without soliciting bids, providing
24 notice, or for consideration which is less than the
25 appraised value of the property, if the Secretary de-
26 termines that the conveyance is not contrary to the

1 best interests of the Individual Indian and that the
2 Individual Indian has been duly informed of and un-
3 derstands the fair market appraisal, and is not being
4 coerced into the conveyance.

5 (2) INDIVIDUALS.—An individual described in
6 this paragraph is limited to the Individual Indian
7 spouse, father, mother, brother or sister, son, daugh-
8 ter or other lineal descendant, aunt or uncle, cousin,
9 niece or nephew, or Individual Indian co-owner.

10 **SEC. 203. REIMPOSITION OF RESTRICTIONS ON RE-**
11 **STRICTED PROPERTY CONVEYED TO INDIAN**
12 **HOUSING AUTHORITIES.**

13 (a) IN GENERAL.—

14 (1) CERTIFICATE OF RESTRICTED STATUS.—In
15 any case where the restrictions have been removed
16 from restricted property for the purpose of allowing
17 conveyances of the property to Indian housing au-
18 thorities to enable such authorities to build homes
19 for individual owners or relatives of owners of re-
20 stricted property, the Secretary shall issue a Certifi-
21 cate of Restricted Status describing the property
22 and imposing restrictions thereon upon written re-
23 quest by the Individual Indian homebuyer or an In-
24 dividual Indian successor in interest to such home-
25 buyer.

1 (2) REQUEST FOR CERTIFICATE.—The request
2 referred to in paragraph (1) shall—

3 (A) include evidence satisfactory to the
4 Secretary that the homebuyer's contract has
5 been paid in full; and

6 (B) be delivered to the Secretary not later
7 than 5 years after the housing authority con-
8 veys such property back to the original Indi-
9 vidual Indian homebuyer or an Individual In-
10 dian assignee or successor of the original Indi-
11 vidual Indian homebuyer.

12 (b) EXISTING LIENS.—Prior to issuing a certificate
13 under subsection (a) with respect to property, the Sec-
14 retary may require the elimination of any existing liens
15 or other encumbrances which would substantially interfere
16 with the use of the property.

17 (c) APPLICATION TO CERTAIN HOMEBUYERS.—Indi-
18 vidual Indian homebuyers described in subsection (a) who
19 acquired ownership of property prior to the effective date
20 of this Act shall have 5 years from such effective date to
21 request that the Secretary issue a certificate under such
22 subsection.

23 (d) RULE OF CONSTRUCTION.—Nothing in this Act
24 shall be construed to limit or affect the rights of Individual
25 Indians described in this section under other Federal laws

1 and regulations relating to the acquisition and status of
2 trust property.

3 **SEC. 204. ADMINISTRATIVE APPROVAL OF PARTITION IN**
4 **KIND.**

5 (a) PARTITION IN KIND OF TRUST PROPERTY.—

6 (1) JURISDICTION.—The Secretary shall have
7 exclusive jurisdiction to approve the partition in kind
8 of trust property pursuant to paragraph (2), where
9 all of the undivided –interests in such property are
10 held in trust.

11 (2) APPROVAL ORDER.—The Secretary may
12 issue an order approving the partition in kind of
13 trust property described in paragraph (1) after re-
14 ceiving an application pursuant to –subsection (d)(1)
15 and satisfying the requirements of subsection (d),
16 paragraphs (2) and (3), if—

17 (A) the Individual Indian owners of more
18 than 50 percent of the total undivided interest
19 in the property approve a plan to partition such
20 property; and

21 (B) the Secretary finds the plan to be rea-
22 sonable, fair, and equitable.

23 (3) RULE OF CONSTRUCTION.—This subsection
24 shall not apply to trust property if 1 or more of the

1 undivided interests referred to in paragraph (1) are
2 held in trust for an Indian Nation.

3 (b) PARTITION IN KIND OF PROPERTY COMPRISED
4 OF UNDIVIDED TRUST AND NONTRUST INTERESTS.—

5 (1) JURISDICTION.—The Secretary shall have
6 jurisdiction to approve deeds for the partition in
7 kind of property comprised of undivided trust and
8 nontrust interests, held in common ownership by at
9 least 1 Individual Indian and 1 or more co-owners.

10 (2) APPROVAL OF PARTITION DEEDS.—The
11 Secretary may issue an order approving the partition
12 in kind of all or a portion of the property described
13 in paragraph (1) after receiving an application pur-
14 suant to subsection (d)(1) and satisfying the re-
15 quirements of subsection (d), paragraphs (2) and
16 (3), if—

17 (A) a plan described in subsection (d)(2)
18 or (d)(3) is approved in writing by all of the
19 owners; and

20 (B) the Secretary finds the plan to be rea-
21 sonable, fair, and equitable.

22 (c) PARTITION OF RESTRICTED PROPERTY.—

23 (1) JURISDICTION.—The Secretary shall have
24 jurisdiction to approve deeds for the partition in

1 kind of property some or all of which consists of un-
2 divided interests in restricted property.

3 (2) APPROVAL OF PARTITION DEEDS.—The
4 Secretary may—

5 (A) approve the partition in kind of all or
6 a portion of the property described in para-
7 graph (1) after receiving an application pursu-
8 ant to subsection (d)(1) and satisfying the re-
9 quirements of subsection (d), paragraphs (2)
10 and (3); and

11 (B) secure and approve appropriate deeds
12 from all Individual Indian owners if—

13 (i) a plan described in subsection
14 (d)(2) or (d)(3) is approved in writing by
15 all of the Individual Indians who own an
16 undivided restricted interest in the prop-
17 erty; and

18 (ii) the Secretary finds the plan to be
19 reasonable, fair, and equitable.

20 (3) CONTINUATION OF RESTRICTED STATUS.—

21 The restricted status of any property acquired by an
22 Individual Indian by deed exchange for the purpose
23 of effecting a partition plan shall remain restricted
24 pursuant to section 101(b)(1). Any property ac-
25 quired by an Individual Indian by purchase for the

1 purpose of effecting a partition plan shall remain re-
2 stricted if the requirements of section 101(b)(2) are
3 met.

4 (d) PROCEDURES.—

5 (1) APPLICATION.—An owner or owners of an
6 undivided interest in any trust property described in
7 subsections (a)(1) or (b)(1) or any restricted prop-
8 erty described in subsection (c)(1) may make written
9 application, on a form approved by the Secretary,
10 for the partition in kind of the restricted property or
11 trust property described in the application.

12 (2) DETERMINATION.—If, based on an applica-
13 tion submitted under paragraph (1), the Secretary
14 determines that the property involved is susceptible
15 to partition in kind, the Secretary shall initiate par-
16 tition of the property by—

17 (A) notifying the owners of such deter-
18 mination;

19 (B) providing the owners with a partition
20 plan; and

21 (C) affording the owners a reasonable time
22 to respond, object, or consent in accordance
23 with subsections (a)(2)(A), (b)(2)(A), or
24 (c)(2)(B).

1 (3) PROPOSED LAND DIVISION PLAN.—The Sec-
2 retary shall give applicants and all other owners of
3 property subject to a partition application under this
4 section a reasonable opportunity to negotiate a pro-
5 posed land division plan for the purpose of securing
6 ownership of a tract on the property equivalent to
7 their respective interests in the undivided estate,
8 prior to taking any action related to partition in
9 kind of the property under this section. The Sec-
10 retary may facilitate the negotiations for a land divi-
11 sion plan.

12 (4) CONVEYANCES.—After the Secretary has
13 approved a partition pursuant to subsection (a), (b),
14 or (c), the Secretary shall issue or approve any or-
15 ders, deeds, or instruments of conveyance necessary
16 to complete the partition.—

17 (e) AUTHORITY OF SECRETARY TO CONSENT TO
18 PLAN OF PARTITION ON BEHALF OF CERTAIN OWN-
19 ERS.—The Secretary may give written consent to a plan
20 of partition—

21 (1) pursuant to subsections (a)(2)(A),
22 (b)(2)(A), or (c)(2)(B)(1) on behalf of any owner of
23 an undivided interest if—

1 (A) the owner is deceased and the heirs to,
2 or devisees of, the interest of the deceased
3 owner have not been determined;

4 (B) the heir or devisee referred to in para-
5 graph (1) has been determined but cannot be
6 located; or

7 (C) the owner is a minor, non compos
8 mentis, or otherwise under legal disability (un-
9 less a guardian or conservator possesses the au-
10 thority to approve a plan of partition on behalf
11 of the owner); and

12 (2) pursuant to subsections (b)(2)(A) and
13 (c)(2)(B) on behalf of any Individual Indian owner
14 who cannot be located if the owners of 50 percent
15 or more of the individual interest consent to such a
16 plan.

17 **SEC. 205. SURFACE LEASES.**

18 The Secretary may approve leases of restricted prop-
19 erty by an Individual Indian pursuant to the Act of Au-
20 gust 9, 1955 (25 U.S.C. 415 et seq.), section 105 of the
21 American Indian Agricultural Resource Management Act
22 (25 U.S.C. 3715), and section 219 of the Indian Land
23 Consolidation Act (25 U.S.C. 2218).

1 **SEC. 206. SECRETARIAL APPROVAL OF MINERAL LEASES**
2 **OR AGREEMENTS.**

3 (a) APPROVAL.—

4 (1) GENERAL RULE.—No lease or agreement
5 purporting to convey or create any mineral interest
6 in restricted or trust property that is entered into or
7 renewed after the effective date of this Act shall be
8 valid unless approved by the Secretary.

9 (2) REQUIREMENTS.—The Secretary may ap-
10 prove a lease or agreement described in paragraph
11 (1) only if—

12 (A) the Individual Indian owners of a ma-
13 jority of the undivided interest in the restricted
14 or trust mineral estate that is the subject of the
15 lease or agreement (including any interest cov-
16 ered by a lease or agreement executed by the
17 Secretary under subsection (c)) consent to the
18 lease or agreement;

19 (B) the Secretary determines that approv-
20 ing the lease or agreement is in the best inter-
21 est of the Individual Indian owners of the re-
22 stricted or trust mineral interests; and

23 (C)(i) the Secretary has accepted the high-
24 est bid for such lease or agreement after a com-
25 petitive bidding process has been conducted by
26 the Secretary, or

1 (ii) the Secretary has determined that it is
2 in the best interest of the Individual Indian
3 owners to award a lease made by negotiation,
4 and the Individual Indian owners so consent in
5 writing.

6 (b) EFFECT OF APPROVAL.—Upon the approval of
7 a lease or agreement by the Secretary under subsection
8 (a), the lease or agreement shall be binding upon all own-
9 ers of the restricted or trust undivided interests subject
10 to the lease or agreement and all other parties to the lease
11 or agreement, to the same extent as if all of the owners
12 of the restricted or trust mineral interests involved had
13 consented to the lease or agreement.

14 (c) EXECUTION OF LEASE OR AGREEMENT BY SEC-
15 RETARY.—The Secretary may execute a mineral lease or
16 agreement that affects restricted or trust property inter-
17 ests on behalf of an Individual Indian owner if that owner
18 is deceased and the heirs to, or devisees of, the interest
19 of the deceased owner have not been determined, or if the
20 heirs or devisees have been determined but one or more
21 of the heirs or devisees cannot be located.

22 (d) DISTRIBUTION OF PROCEEDS.—The proceeds de-
23 rived from a mineral lease or agreement approved by the
24 Secretary under subsection (a) shall be distributed in ac-
25 cordance with the interest held by each owner pursuant

1 to such rules and regulations as may be promulgated by
2 the Secretary.

3 (e) COMMUNITIZATION AGREEMENTS.—Restricted or
4 trust mineral interests underlying property located within
5 a spacing and drilling unit approved by the Oklahoma Cor-
6 poration Commission shall not be drained of any oil or
7 gas by a well within such unit without a communitization
8 agreement prepared and approved by the Secretary. In the
9 event of any such drainage without a communitization
10 agreement approved by the Secretary, 100 percent of all
11 revenues derived from the production from any such re-
12 stricted or trust property shall be paid to the Individual
13 Indian owner free of all drilling, lifting, and other produc-
14 tion costs.

15 **SEC. 207. MANAGEMENT OF MINERAL INTERESTS.**

16 (a) OIL AND GAS CONSERVATION LAWS.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in this Act, the oil and gas conservation laws
19 of the State of Oklahoma shall apply to restricted
20 property.

21 (2) APPROVAL.—No order of the Corporation
22 Commission affecting restricted property shall be
23 valid as to such property until such order is sub-
24 mitted to and approved by the Secretary.

1 (3) NOTICE.—Notice of any hearing or any
2 order pending before the Oklahoma Corporation
3 Commission affecting restricted or trust property
4 shall be furnished to the Secretary of the Interior
5 not less than 30 days prior to the date of the hear-
6 ing or the approval of the order by the Commission.

7 (4) RULE OF CONSTRUCTION.—To the extent
8 that an interest in any such well is not restricted
9 property, the authority of the Secretary over the re-
10 stricted mineral interest shall be exercised in con-
11 junction with the Oklahoma Corporation Commis-
12 sion's authority over such nonrestricted interest.
13 Nothing in this subsection shall be construed to
14 grant to the State of Oklahoma regulatory jurisdic-
15 tion over the protection of the environment and nat-
16 ural resources of restricted property, except to the
17 limited extent granted by this subsection.

18 (b) IMPLEMENTATION OF FEDERAL OIL AND GAS
19 ROYALTY MANAGEMENT ACT.—Beginning on the effective
20 date of this Act, the Secretary shall exercise all the duties
21 and responsibilities of the Secretary under the Federal Oil
22 and Gas Royalty Management Act of 1982 (30 U.S.C.
23 1702 et seq.) with respect to an oil and gas lease where—

24 (1) the Secretary has approved the oil and gas
25 lease pursuant to section 206(a);

1 (2) the Secretary has, prior to the effective date
 2 of this Act, approved the oil and gas lease pursuant
 3 to the Act of May 27, 1908 (35 Stat. 312, chapter
 4 199); or

5 (3) the Secretary has, before the effective date
 6 of this Act, approved an oil and gas lease of lands
 7 of any of the Five Nations pursuant to the Act of
 8 May 11, 1938 (25 U.S.C. 396a et seq.).

9 **SEC. 208. MORTGAGES.**

10 An Individual Indian may mortgage restricted prop-
 11 erty only in accordance with and under the authority of
 12 the Act of March 29, 1956 (25 U.S.C. 483a).

13 **TITLE III—PROBATE, HEIRSHIP**
 14 **DETERMINATION, AND OTHER**
 15 **PROCEEDINGS AFFECTING**
 16 **TITLE TO RESTRICTED PROP-**
 17 **ERTY**

18 **SEC. 301. ACTIONS AFFECTING RESTRICTED PROPERTY.**

19 The Secretary shall have jurisdiction over actions af-
 20 fecting title to, or use or disposition of, trust property or
 21 restricted property. The United States district courts in
 22 the State of Oklahoma and the courts of the State of Okla-
 23 homa shall have jurisdiction over actions affecting title to,
 24 or use or disposition of, trust property or restricted prop-
 25 erty only to the extent expressly authorized by this Act

1 or by other Federal laws applicable to trust property or
2 restricted property.

3 **SEC. 302. HEIRSHIP DETERMINATIONS AND PROBATES.**

4 (a) JURISDICTION.—The Secretary shall have exclu-
5 sive jurisdiction to probate wills or otherwise determine
6 heirs of deceased Individual Indians and to adjudicate all
7 such estate actions to the extent that they involve indi-
8 vidual trust property, restricted property, or trust funds
9 or securities held or supervised by the Secretary derived
10 from such property, subject to the following exceptions:

11 (1) The Secretary shall not have jurisdiction
12 over such estate actions that are pending in the
13 courts of the State of Oklahoma as provided in sec-
14 tion 306 on the effective date of this Act.

15 (2) The Secretary shall not have jurisdiction
16 over any estate for which a final order of probate or
17 determination of heirs was issued by a court of the
18 State of Oklahoma or a United States district court
19 prior to the effective date of this Act.

20 (b) GOVERNING LAWS.—Notwithstanding any other
21 provision of law, the Secretary shall have jurisdiction and
22 authority under this section and sections 1 and 2 of the
23 Act of June 25, 1910 (25 U.S.C. 372 and 373, respec-
24 tively) to determine heirs, approve and probate wills, and
25 distribute restricted property, trust property, and trust

1 funds in estates of Individual Indian decedents, subject
2 to the following requirements:

3 (1) LAW APPLICABLE TO ESTATES OF INDI-
4 VIDUAL INDIAN DECEDENTS WHO DIED INTESTATE
5 PRIOR TO EFFECTIVE DATE.—The administrative
6 law judge or other official designated by the Sec-
7 retary shall apply the laws of the State of Oklahoma
8 governing descent and distribution in force on the
9 date of the decedent's death to all restricted prop-
10 erty, trust property, and trust funds or securities de-
11 rived from such property in the estates of deceased
12 Individual Indians who died intestate prior to the ef-
13 fective date of this Act.

14 (2) LAW APPLICABLE TO ESTATES OF INDI-
15 VIDUAL INDIAN DECEDENTS WHO DIE INTESTATE
16 ON OR AFTER EFFECTIVE DATE.—The administra-
17 tive law judge or other official designated by the
18 Secretary shall apply the following laws to all re-
19 stricted property, trust property, and trust funds or
20 securities derived from such property in the estates
21 of deceased Individual Indians who die intestate on
22 or after the effective date of this Act:

23 (A) A probate code approved by the Sec-
24 retary applicable to such property, funds, and
25 securities but only if approved by the Secretary

1 in accordance with section 206(b)(2) of Public
2 Law 97–459 (25 U.S.C. 2205(b)(2)).

3 (B) In the absence of a probate code ap-
4 proved by the Secretary in accordance with sec-
5 tion 206(b)(2) of Public Law 97–459 (25
6 U.S.C. 2205(b)(2)), any Federal statute estab-
7 lishing rules of descent and distribution for
8 trust or restricted property.

9 (C) In the absence of either a probate code
10 approved by the Secretary in accordance with
11 section 206(b)(2) of Public Law 97–459 (25
12 U.S.C. 2205(b)(2)) or a Federal statute estab-
13 lishing rules of descent and distribution for
14 trust or restricted property, the laws of descent
15 and distribution in force in the State of Okla-
16 homa.

17 (3) LAW APPLICABLE TO WILLS EXECUTED
18 PRIOR TO EFFECTIVE DATE.—

19 (A) IN GENERAL.—The Secretary shall ap-
20 prove a will of an estate containing trust prop-
21 erty, restricted property, or trust funds or secu-
22 rities derived from such property if the will was
23 executed by an Individual Indian (i) prior to the
24 effective date of this Act, and (ii) in accordance

1 with the laws of the State of Oklahoma gov-
2 erning the validity and effect of wills.

3 (B) EXCEPTION.—Notwithstanding sub-
4 paragraph (A), the will of a full-blood Indi-
5 vidual Indian which disinherits the parent,
6 spouse, or one or more children of such full-
7 blood Individual Indian shall not be valid with
8 respect to the disposition of restricted property
9 unless the requirements of section 23 of the Act
10 of April 26, 1906 (34 Stat. 137, chapter 1876),
11 as in effect on the day before the effective date
12 of this Act, are met.

13 (4) LAW APPLICABLE TO WILLS EXECUTED ON
14 OR AFTER EFFECTIVE DATE.—

15 (A) IN GENERAL.—Any Individual Indian
16 who has attained age 18 and owns restricted
17 property, trust property, or trust funds or secu-
18 rities may dispose of such assets by will, exe-
19 cuted on or after the effective date of this Act.
20 The Secretary shall review and approve such
21 wills in accordance with section 2 of the Act of
22 June 25, 1910 (25 U.S.C. 373).

23 (B) FRAUD.—In any case where a will has
24 been approved by the Secretary under subpara-
25 graph (A) and it is subsequently discovered that

1 there was fraud in connection with the execu-
2 tion or procurement of the will, the Secretary is
3 authorized, within 1 year after the death of the
4 testator, to cancel approval of the will. If an ap-
5 proval is canceled in accordance with the pre-
6 ceding sentence, the property purported to be
7 disposed of in the will shall descend or be dis-
8 tributed as property of an intestate decedent
9 under paragraph (2).

10 (5) FEDERAL LAW CONTROLS.—Notwith-
11 standing any other provision of this section, Federal
12 law governing personal claims against the estate of
13 a deceased Individual Indian or against trust prop-
14 erty or restricted property, including the restrictions
15 imposed by this Act or other applicable Federal law
16 against the alienation, conveyance, lease, mortgage,
17 creation of liens, or other encumbrances of trust
18 property, restricted property, and trust funds and
19 securities shall apply to all such assets contained in
20 the estate of the deceased Individual Indian.

21 **SEC. 303. ACTIONS TO CURE TITLE DEFECTS.**

22 (a) JURISDICTION.—Except as provided in sub-
23 sections (b) and (c), the United States district courts in
24 the State of Oklahoma and the State courts of Oklahoma
25 shall retain jurisdiction over actions seeking to cure de-

1 facts affecting the marketability of title to restricted prop-
2 erty.

3 (b) ADVERSE POSSESSION.—No cause of action may
4 be brought to claim title to or an interest in restricted
5 property by adverse possession or the doctrine of laches
6 on or after the effective date of this Act, except that—

7 (1) all such causes that are pending on the ef-
8 fective date of this Act in accordance with the provi-
9 sions of section 3 of the Act of April 12, 1926 (44
10 Stat. 239, chapter 115), shall be subject to section
11 306; and

12 (2) an action to quiet title to an interest in re-
13 stricted property on the basis of adverse possession
14 may be filed in the courts of the State of Oklahoma
15 if all requirements of Oklahoma law for acquiring
16 title by adverse possession, including the running of
17 the full 15-year limitations period, have been met
18 prior to the effective date of this Act.

19 (c) LAW APPLICABLE IN CERTAIN ACTIONS.—In any
20 action referred to in subsection (b)(2) that is—

21 (1) filed not later than 2 years after the effec-
22 tive date of this Act, the law applicable to such an
23 action on the day before the date of the enactment
24 of this Act shall apply; and

1 (2) filed more than 2 years after the effective
2 date of this Act, the claimant must show by clear
3 and convincing evidence that all requirements of
4 Oklahoma law for acquiring title by adverse posses-
5 sion in effect on the day before the date of the en-
6 actment of this Act, including the running of the full
7 15-year limitations period, were met prior to the ef-
8 fective date of this Act.

9 (d) APPLICABILITY OF CERTAIN PROVISION OF THIS
10 ACT.—Any action filed pursuant to subsection (a) or
11 (b)(2) shall be subject to the procedures set forth in sec-
12 tion 305.

13 (e) HEIRSHIP DETERMINATIONS AND DISPOSI-
14 TIONS.—

15 (1) NO DEROGATION OF JURISDICTION.—Noth-
16 ing in this section shall be construed to authorize a
17 determination of heirs in a quiet title action in Fed-
18 eral or State court in derogation of the Secretary's
19 exclusive jurisdiction to probate wills or otherwise
20 determine heirs of the deceased Individual Indians
21 owning restricted property and to adjudicate all such
22 estate actions involving restricted property pursuant
23 to section 302, or in derogation of the Secretary's
24 exclusive jurisdiction over the disposition of re-
25 stricted property under this Act.

1 (2) REQUEST FOR DETERMINATION OF HEIRS
2 TO ESTABLISH MARKETABLE TITLE.—Any grantee
3 of an undetermined heir who, prior to the effective
4 date of this Act and in accordance with applicable
5 Federal laws, conveyed, leased, or otherwise encum-
6 bered his or her interest in the restricted property
7 of an unprobated estate of an Individual Indian de-
8 cedent may request that the Secretary determine the
9 heirs of the decedent in order to establish market-
10 able title in said grantee.

11 (3) DETERMINATION REQUIRED.—Upon receipt
12 of an application made under paragraph (2), the
13 Secretary shall determine the heirs in accordance
14 with the provisions of section 302.

15 (4) GRANTEE.—For purposes of this subsection
16 the term grantee shall include any grantee, lessee, or
17 mortgagee of such heir and any successors or as-
18 signs of such grantee.

19 **SEC. 304. INVOLUNTARY PARTITIONS OF RESTRICTED**
20 **PROPERTY.**

21 (a) PETITION; JURISDICTION AND APPLICABLE LAW;
22 REQUIREMENTS.—

23 (1) PETITIONS.—Subject to the provisions of
24 subsection (d), any person who owns any undivided
25 interest in a tract of property consisting entirely or

1 partially of undivided restricted interests, regardless
2 of the size of that person's interest in the whole
3 tract, may file an action in the United States district
4 court in the district wherein the tract is located or
5 the Oklahoma State district court for the county
6 wherein the tract is located for the involuntary parti-
7 tion of such tract.

8 (2) JURISDICTION; APPLICABLE LAW.—The
9 United States district courts in the State of Okla-
10 homa and the State courts of Oklahoma shall have
11 jurisdiction over actions for the involuntary partition
12 of property filed pursuant to this section, subject to
13 all requirements and limitations of this section and
14 the requirements in sections 305 and 306. The laws
15 of the State of Oklahoma governing the partition of
16 property shall be applicable to all actions for invol-
17 untary partition under this section, except to the ex-
18 tent that any such laws are in conflict with any pro-
19 visions of this section and sections 305 and 306.

20 (3) AGREEMENT AFTER INITIATION OF AC-
21 TION.—If after the initiation of any action author-
22 ized by this section, the parties to the suit reach an
23 agreement for the partition of the property in kind
24 or by sale, such agreement shall not be valid or
25 binding as to the restricted interests until it is ap-

1 proved by the Secretary. The Secretary shall approve
2 the partition plan if he finds it to be fair, reasonable
3 and equitable to the Individual Indian owners of the
4 restricted interests.

5 (4) APPROVAL OF ELECTION OR SALE.—If the
6 tract consists of wholly or partially undivided re-
7 stricted interests, the court may approve an election
8 by any undivided interest owner to take the property
9 at the full appraised value pursuant to the laws of
10 the State of Oklahoma governing partitions in effect
11 on the effective date of this Act or, if there is no
12 such election, to approve the sale of the property at
13 public auction for no less than two-thirds of the ap-
14 praised value pursuant to such laws of the State of
15 Oklahoma.

16 (5) DETERMINATION OF VALUE.—The Sec-
17 retary shall determine the value of the property and
18 submit an appraisal to the court. If the value of the
19 property determined by the Secretary is greater than
20 the valuation or appraisal of the property made
21 pursuant to law of the State of Oklahoma, the court
22 shall set a hearing at which time the Secretary and
23 any other party shall be afforded an opportunity to
24 present evidence regarding the value of the property,
25 following which the court may accept the Secretary's

1 valuation, or accept the valuation and appraisalment
2 made pursuant to law of the State of Oklahoma, or
3 order a new valuation and appraisalment pursuant to
4 law of the State of Oklahoma.

5 (b) PAYMENT TO NONCONSENTING OWNERS OF RE-
6 STRICTED INTERESTS.—Nonconsenting owners of undi-
7 vided restricted interests shall receive for the sale of such
8 interests their proportionate share of the greater of—

- 9 (1) the proceeds paid at the partition sale; or
10 (2) an amount equal to 90 percent of the ap-
11 praised value of the tract.

12 (c) COSTS.—A nonconsenting Individual Indian
13 owner of restricted interests shall not be liable for any fil-
14 ing fees or costs of an action under this section, including
15 the cost of an appraisal, advertisement, and sale, and no
16 such costs shall be charged against such nonconsenting
17 owner's share of the proceeds of sale.

18 (d) DEADLINE.—No action for the involuntary parti-
19 tion of property shall be maintained under this section un-
20 less it is filed within 10 years after the effective date of
21 this Act.

1 **SEC. 305. REQUIREMENTS FOR ACTIONS TO CURE TITLE**
2 **DEFECTS AND INVOLUNTARY PARTITIONS.**

3 (a) IN GENERAL.—All actions authorized by sections
4 303 and 304 shall be conducted in accordance with the
5 requirements and procedures described in this section.

6 (b) PARTIES.—

7 (1) UNITED STATES.—The United States shall
8 not be a necessary and indispensable party to an ac-
9 tion authorized under section 303 or 304. The Sec-
10 retary may participate as a party in any such action.

11 (2) PARTICIPATION OF THE SECRETARY.—If
12 the Secretary elects to participate in an action as
13 provided for under paragraph (1), the responsive
14 pleading of the Secretary shall be made not later
15 than 20 days after the Secretary receives the notice
16 required under subsection (c), or within such ex-
17 tended time as the trial court in its discretion may
18 permit.

19 (3) JUDGMENT BINDING.—After the appear-
20 ance of the Secretary in any action described in
21 paragraph (1), or after the expiration of the time in
22 which the Secretary is authorized to respond under
23 paragraph (2), the proceedings and judgment in
24 such action shall be binding on the United States
25 and the parties upon whom service has been made
26 and shall affect the title to the restricted property

1 which is the subject of the action, in the same man-
2 ner and extent as though nonrestricted property
3 were involved.

4 (4) RULE OF CONSTRUCTION.—Nothing in this
5 section shall be construed to waive the requirement
6 of service of summons in accordance with applicable
7 Federal or State law upon the Individual Indian
8 landowners, who shall be necessary and indispen-
9 sable parties to all actions authorized by sections
10 303 and 304.

11 (c) NOTICE.—

12 (1) IN GENERAL.—The plaintiff in any action
13 authorized by sections 303 and 304 shall serve writ-
14 ten notice of the filing of such action and of a peti-
15 tion or complaint, or any amended petition or com-
16 plaint which substantially changes the nature of the
17 action or includes a new cause of action, upon the
18 Secretary not later than 10 days after the filing of
19 any such petition or complaint or any such amended
20 petition or complaint.

21 (2) FILING WITH CLERK.—At least one dupli-
22 cate original of any notice served under paragraph
23 (1) shall be filed with the clerk of the court in which
24 the action is pending.

1 (3) REQUIREMENTS.—The notice required
2 under paragraph (1) shall be—

3 (A) accompanied by a certified copy of all
4 pleadings on file in the action at the time of the
5 filing of the duplicate original notice with the
6 clerk under paragraph (2);

7 (B) signed by the plaintiff to the action or
8 his or her counsel of record; and

9 (C) served by certified mail, return receipt
10 requested, and due return of service made
11 thereon, showing date of receipt and service of
12 notice.

13 (4) FAILURE TO SERVE.—If the notice required
14 under paragraph (1) is not served within the time
15 required under such paragraph, or if return of serv-
16 ice thereof is not made within the time permitted by
17 law for the return of service of summons, alias no-
18 tices may be issued and filed until service and return
19 of notice is made, except that in the event that serv-
20 ice of the notice required under such paragraph is
21 not made within 60 days following the filing of the
22 petition or complaint or amendments thereof, the ac-
23 tion shall be dismissed without prejudice.

24 (5) LIMITATION.—In no event shall the United
25 States or the parties named in a notice filed under

1 paragraph (1) be bound, or title to the restricted
2 property be affected, unless written notice is served
3 upon the Secretary as required under this sub-
4 section.

5 (d) REMOVAL.—

6 (1) IN GENERAL.—The United States shall
7 have the right to remove any action to which this
8 section applies that is pending in a State court to
9 a United States district court by filing with the
10 State court, not later than 20 days after the service
11 of any notice with respect to such action under sub-
12 section (c), or within such extended period of time
13 as the trial court in its discretion may permit, a no-
14 tice of the removal of such action to a United States
15 district court, together with the certified copy of the
16 pleadings in such action as served on the Secretary
17 under subsection (c).

18 (2) DUTY OF STATE COURT.—It shall be the
19 duty of a State court to accept a notice filed under
20 paragraph (1) and proceed no further in said suit.

21 (3) PLEADINGS.—Not later than 20 days after
22 the filing of a notice under paragraph (1), the copy
23 of the pleadings involved (as provided under such
24 paragraph) shall be entered in the United States dis-
25 trict court and the defendants and intervenors in

1 such action shall, not later than 20 days after the
2 pleadings are so entered, file a responsive pleading
3 to the complaint in such action.

4 (4) PROCEEDINGS.—Upon the submission of
5 the filings required under paragraph (3), the action
6 shall proceed in the same manner as if it had been
7 originally commenced in the United States district
8 court, and its judgment may be reviewed by certio-
9 rari, appeal, or writ of error in like manner as if the
10 action had been originally brought in such district
11 court.

12 **SEC. 306. PENDING STATE PROCEEDINGS.**

13 The courts of the State of Oklahoma shall continue
14 to exercise authority as a Federal instrumentality over all
15 heirship, probate, partition, and other actions involving re-
16 stricted property that are pending on the effective date
17 of this Act until the issuance of a final judgment and ex-
18 haustion of all appeal rights in any such action, or until
19 the petitioner, personal representative, or the State court
20 dismisses the action in accordance with State law.

21 **TITLE IV—MISCELLANEOUS**

22 **SEC. 401. REGULATIONS.**

23 The Secretary may promulgate such regulations as
24 may be necessary to carry out this Act, except that failure

1 to promulgate such regulations shall not limit or delay the
2 effect of this Act.

3 **SEC. 402. VALIDATION OF CERTAIN TRANSACTIONS; SAV-**
4 **INGS CLAUSE.**

5 (a) VALIDATION OF CERTAIN TITLE TRANS-
6 ACTIONS.—Any person having the legal capacity to own
7 real property in the State of Oklahoma who claims owner-
8 ship of an interest in such property through an unbroken
9 chain of title of record, the title to which interest is or
10 may be defective as a result of any transaction described
11 in paragraphs (1) through (5) of this subsection that oc-
12 curred in such chain of title, may cure the defect in title
13 and validate the transaction by following the procedures
14 of this section. When all conditions and requirements of
15 this section have been met, and if no notice of objection
16 has been timely filed by the Secretary under subsection
17 (c) or by any other person under subsection (f), the trans-
18 action shall be validated and shall not be considered a de-
19 fect in the muniments of title but only insofar as the de-
20 fect is based on or arises from Federal statutes applicable
21 to the conveyance or inheritance of restricted property in
22 effect at the time of the transaction. The transactions re-
23 ferred to in this subsection are the following:

24 (1) Any probate order issued by a county court
25 of the State of Oklahoma prior to the effective date

1 of the Act of June 14, 1918 (40 Stat. 606) pur-
2 porting to probate the estate of an Individual Indian
3 who died owning property which was subject to re-
4 strictions against alienation pursuant to Federal
5 statutes in effect at the time of issuance of such pro-
6 bate order.

7 (2) Any probate order issued by a county or
8 district court of the State of Oklahoma more than
9 30 years prior to the effective date of this Act pur-
10 porting to probate the estate of a deceased Indi-
11 vidual Indian who died owning property which was
12 subject to restrictions against alienation pursuant to
13 Federal law in effect at the time of issuance of such
14 probate order, where notice was not given as re-
15 quired by Federal statutes in effect at the time.

16 (3) Any conveyance of record, including an oil
17 and gas or mineral lease, of an interest in property
18 which was subject to restrictions against alienation
19 pursuant to Federal statutes in effect at the time of
20 the conveyance executed by a person who was an
21 heir or purported heir of the Individual Indian dece-
22 dent who owned such property at the time of his
23 death, if such conveyance was approved by a county
24 or district court in Oklahoma more than 30 years
25 before the effective date of this Act but where no ju-

1 dicial or administrative order of record was issued
2 before or after such approval finding that such per-
3 son was in fact the heir to the interest conveyed.

4 (4) Any conveyance of record, including an oil
5 and gas or mineral lease, of individual trust property
6 or property which was subject to restrictions against
7 alienation pursuant to Federal statutes in effect at
8 the time of the conveyance that was approved by a
9 county or district court in Oklahoma or by the Sec-
10 retary more than 30 years before the effective date
11 of this Act, where—

12 (A) approval was not in compliance with
13 the notice requirements of Federal statutes gov-
14 erning the conveyance of said individual trust
15 property or said restricted property; or

16 (B) approval was given by a county or dis-
17 trict court in Oklahoma of a conveyance of the
18 property by a personal representative in a pro-
19 bate action over which said county or district
20 court possessed jurisdiction, without compliance
21 with Federal statutes governing the conveyance
22 of the property in effect at the time of the con-
23 veyance.

24 (5) Any conveyance of record, including an oil
25 and gas or mineral lease, of individual trust property

1 or property which was subject to restrictions against
2 alienation pursuant to Federal statutes in effect at
3 the time of the conveyance that was approved by a
4 county or district court in Oklahoma or by the Sec-
5 retary at any time before the effective date of this
6 Act, where—

7 (A) approval was given by the Secretary
8 where the Federal statutes governing the con-
9 veyance of the property required approval by a
10 county or district court in Oklahoma; or

11 (B) approval was given by a county or dis-
12 trict court in Oklahoma where the Federal stat-
13 utes governing the conveyance of the property
14 in effect at the time of the conveyance required
15 approval of the Secretary.

16 (b) NOTICE OF CLAIM; SERVICE AND RECORDING.—

17 (1) NOTICE TO THE SECRETARY.—Any claim-
18 ant described in subsection (a) must serve written
19 notice of his or her claim by certified mail, return
20 receipt requested, on the Secretary, and file the no-
21 tice of claim, together with a copy of the return re-
22 ceipt showing delivery to the Secretary and filing in
23 the office of county clerk in the county or counties
24 wherein the property is located. The notice shall not
25 be complete for the purposes of this section until it

1 has been served on the Secretary and filed of record
2 as herein provided. The notice of claim shall set
3 forth the following:

4 (A) The claimant's name and mailing ad-
5 dress.

6 (B) An accurate and full description of all
7 property affected by such notice, which descrip-
8 tion shall be set forth in particular terms and
9 not be general inclusions; but if said claim is
10 founded upon a recorded instrument, then the
11 description in such notice may be the same as
12 that contained in such recorded instrument.

13 (C) A specific reference to or description of
14 each title transaction in the chain of title, in-
15 cluding the date of same, that the claimant is
16 attempting to validate pursuant to this section.

17 (D) A list of all documents of record that
18 are part of the claimant's unbroken chain of
19 title, copies of which documents shall be served
20 with the notice.

21 (2) PUBLICATION NOTICE.—In addition to the
22 notice to the Secretary required under paragraph
23 (1), the claimant shall give notice by publication of
24 his or her claim to other persons who may claim
25 some interest in the property in accordance with this

1 paragraph. The claimant shall cause notice of his or
2 her claim to be published one time in a newspaper
3 of general circulation in the county or counties
4 wherein the property is located and shall thereafter
5 cause proof of such publication to be filed in the of-
6 fice of the county clerk for such county or counties.
7 The published notice shall set forth the following:

8 (A) The claimant's name and mailing ad-
9 dress.

10 (B) The same description of the property
11 required under subsection (b)(1)(B) to be in-
12 cluded in the notice to the Secretary.

13 (C) A description of each title transaction
14 in the chain of title, including the date of same,
15 that the claimant is attempting to validate pur-
16 suant to this section.

17 (D) A statement that any person claiming
18 an interest in the described property may file a
19 written notice of objection, in the form of a dec-
20 laration under oath, in the office of the county
21 clerk of the county or counties wherein the
22 property is located not more than 60 days after
23 the date of publication of the notice in such
24 newspaper, and that the written notice of objec-
25 tion must set forth—

- 1 (i) the declarant's name and mailing
2 address;
- 3 (ii) the description of the property set
4 forth in the publication notice; and
- 5 (iii) a statement that the declarant
6 claims in good faith to be the owner of
7 some interest in the property and objects
8 to the validation of the transactions de-
9 scribed in the publication notice.

10 (c) RESPONSE DEADLINE; EXTENSION.—The Sec-
11 retary shall have 60 days after the date of receipt of the
12 notice of claim in which to notify the claimant in writing
13 that the Secretary exercises discretionary authority to ob-
14 ject to the claim for any reason. The Secretary shall be
15 entitled to an automatic extension of time of 60 days in
16 which to object to the claim upon the Secretary's service
17 of written notice of extension on the claimant within the
18 initial 60-day response period.

19 (d) NOTICE OF OBJECTION; REMEDIES.—The Sec-
20 retary shall send the notice of objection and any notice
21 of extension of time to the claimant by certified mail to
22 the address set forth in the claimant's notice to the Sec-
23 retary. The Secretary's notice of objection or notice of ex-
24 tension of time shall include a description of the property
25 and shall be effective on the date of mailing. The Sec-

1 retary shall file the notice of objection or notice of exten-
2 sion of time in the office of the county clerk for the county
3 or counties wherein the property is located within 30 days
4 after the date of mailing of the notice to the claimant.
5 If the Secretary notifies the claimant that the Secretary
6 objects to the claim, such decision shall be final for the
7 Department and the claimant's sole remedies shall be to
8 file an action to cure title defects pursuant to section 303
9 of this Act or to request a determination of heirs in ac-
10 cordance with section 302 of this Act.

11 (e) UNDISPUTED CLAIM.—If, in the exercise of dis-
12 cretionary authority pursuant to subsection (c), the Sec-
13 retary does not object to the claim, then the Secretary may
14 notify the claimant that the matter is not in dispute. Fail-
15 ure of the Secretary to notify the claimant of the Sec-
16 retary's objection within the initial 60-day period, or with-
17 in the 60-day extension period if notice of an extension
18 was given, shall constitute acceptance of the claim. If the
19 Secretary notifies the claimant that the matter is not in
20 dispute or fails to file an objection to the claim of record
21 within the time required by subsection (d), the title trans-
22 action described in the claimant's notice shall be deemed
23 validated and shall not be considered a defect in the
24 muniments of the claimant's title based on or arising from
25 Federal statutes governing the conveyance of restricted

1 property in effect at the time of the transaction, provided
2 that no written notice of objection is timely filed by other
3 parties in response to a notice published pursuant to sub-
4 section (b)(2) or in accordance with subsection (f).

5 (f) NOTICE OF OBJECTION BY OTHER PARTIES TO
6 APPLICABILITY OF THIS SECTION.—Any person claiming
7 ownership of an interest in property the record title to
8 which includes a title transaction described in subsection
9 (a) of this section may prevent the application of sub-
10 sections (a) through (e) to said interest by filing for record
11 in the office of the county clerk for the county or counties
12 wherein the property in question is located, no later than
13 3 years after the effective date of this Act, a written notice
14 of objection in the form of a declaration made under oath
15 setting forth the following:

- 16 (1) The declarant's name and mailing address.
- 17 (2) An accurate and full description of all of
18 the declarant's property interests to be affected by
19 such notice, which description shall be set forth in
20 particular terms and not be general inclusions; but
21 if said declarant's claim to ownership is founded
22 upon a recorded instrument, then the description in
23 such notice may be the same as that contained in
24 such recorded instrument.

1 (3) A statement that the declarant claims in
2 good faith to be the owner of an interest in the
3 property described in the notice and that the declar-
4 ant objects to the operation of this section with re-
5 spect to any title transaction that would otherwise
6 be subject to validation under this section.

7 (g) INTERESTS OF HEIRS OF LESS THAN HALF DE-
8 GREE BLOOD OF THE FIVE NATIONS.—Nothing in this
9 Act shall be construed to invalidate—

10 (1) any conveyance of record, including a sur-
11 face, oil and gas, or mineral lease, of an interest in
12 property made prior to the effective date of this Act
13 by an heir of a deceased Individual Indian without
14 district court approval where such heir was of less
15 than one-half degree of Indian blood, even though
16 the property was held in restricted status imme-
17 diately prior to the decedent Individual Indian's
18 death; or

19 (2) any other encumbrance that attached prior
20 to the effective date of this Act to an interest in
21 property of an heir of a deceased Individual Indian
22 where such heir was of less than one-half degree of
23 Indian blood, even though the property was held in
24 restricted status immediately prior to the decedent
25 Individual Indian's death.

1 (h) TERMS.—For purposes of this section:

2 (1) A person shall be deemed to have an unbroke-
3 ken chain of title when the official public records, in-
4 cluding probate and other official public records, as
5 well as records in the county clerk's office, disclose
6 a conveyance or other title transaction of record not
7 less than 30 years prior to the effective date of this
8 Act, which said conveyance or other title transaction
9 purports to create such interest, either in—

10 (A) the person claiming such interest; or

11 (B) some other person from whom, by 1 or
12 more conveyances or other title transactions of
13 record, such purported interest has become
14 vested in the person claiming such interest;
15 with nothing appearing of record, in either case,
16 purporting to divest such claimant of such pur-
17 ported interest.

18 (2) The term recording, when applied to the of-
19 ficial public records of any officer or court, includes
20 filing with the officer or court.

21 **SEC. 403. REPEALS.**

22 (a) IN GENERAL.—The following provisions are re-
23 pealed:

24 (1) The Act of August 11, 1955 (69 Stat. 666,
25 chapter 786, 25 U.S.C. 355 note).

1 (2) Sections 1 through 5, 7 through 9, and 11
2 through 13 of the Act of August 4, 1947 (61 Stat.
3 731, chapter 458, 25 U.S.C. 355 note).

4 (3) The Act of December 24, 1942 (56 Stat.
5 1080, Chapter 813).

6 (4) The Act of February 11, 1936 (25 U.S.C.
7 393a, Chapter 50).

8 (5) The Act of January 27, 1933 (47 Stat. 777,
9 chapter 23, 25 U.S.C. 355 note).

10 (6) Sections 1, 2, 4, and 5 of the Act of May
11 10, 1928 (45 Stat. 495, chapter 517).

12 (7) The Act of April 12, 1926 (44 Stat. 239,
13 chapter 115).

14 (8) Sections 1 and 2 of the Act of June 14,
15 1918 (Chapter 101, 25 U.S.C. 375 and 355, respec-
16 tively).

17 (9) Sections 1 through 3 and 6 through 12 of
18 the Act of May 27, 1908 (35 Stat. 312, chapter
19 199).

20 (10) Sections 6, 11, 15, 18, 20, and 23 of the
21 Act of April 26, 1906 (34 Stat. 137, chapter 1876).

22 (b) TECHNICAL AMENDMENTS.—

23 (1) Section 28 of the Act of April 26, 1906 (34
24 Stat. 137, chapter 1876) is amended—

25 (A) by striking the first proviso; and

1 (B) by striking “*Provided further*” and in-
2 serting “*Provided*”.

3 (2) The Act of March 3, 1909, (35 Stat. 781,
4 783, chapter 263) is amended by striking “of the
5 Five Civilized Tribes and”.

6 (3) Section 6 of the Act of August 4, 1947 (61
7 Stat. 733, chapter 458) is amended—

8 (A) in subsection (c), by inserting before
9 the final period the following: “: *Provided fur-*
10 *ther*, That any interest in restricted and tax-ex-
11 empt lands acquired by descent, devise, gift, ex-
12 change, partition, conveyance, or purchase with
13 restricted funds after the date of the enactment
14 of the Five Nations Indian Land Reform Act by
15 an Indian of the Five Civilized Tribes shall con-
16 tinue to be tax-exempt during the restricted pe-
17 riod”; and

18 (B) in subsection (e), by striking the first
19 sentence.

20 (4) The Act of June 25, 1910 (25 U.S.C. sec-
21 tion 373) is amended by inserting at the beginning
22 of the last proviso the following: “Except as provided
23 in section 302(b) of the Five Nation Indian Land
24 Reform Act,”.

(5) The Act of May 7, 1970 (84 Stat. 203, Public Law 91-240, 25 U.S.C. 375d), is amended—

(A) by inserting “Creek,” after “Cherokee,”; and

(B) by striking “derived and shall” and inserting the following: “derived. Such lands, interests, and profits, and any restricted Indian lands or interests therein allotted by any such Indian nation that are reacquired by that Indian nation by conveyance authorized under section 202(a) of the Five Nations Indian Land Reform Act shall”.

(6) Section 1 of the Act of October 22, 1970 (84 Stat. 1091, Public Law 91-495), is amended by striking the last sentence.

SEC. 404. SECRETARIAL TRUST RESPONSIBILITY.

Nothing in this Act shall be construed to waive, modify, or diminish in any way the trust responsibility of the United States over restricted property.

SEC. 405. REPRESENTATION BY ATTORNEYS FOR THE DEPARTMENT OF THE INTERIOR.

Attorneys of the Department of the Interior may—

(1) represent the Secretary in any actions filed in the State courts of Oklahoma involving restricted property;

1 (2) when acting as counsel for the Secretary,
2 advising Individual Indians owning restricted prop-
3 erty (and to private counsel for such Individual Indi-
4 ans if any) of their legal rights with respect to the
5 restricted property owned by such Individual Indi-
6 ans;

7 (3) at the request of any Individual Indian own-
8 ing restricted property, take such action as may be
9 necessary to cancel or annul any deed, conveyance,
10 mortgage, lease, contract to sell, power of attorney,
11 or any other encumbrance of any kind or character,
12 made or attempted to be made or executed in viola-
13 tion of this Act or any other Federal law, and take
14 such action as may be necessary to assist such Indi-
15 vidual Indian in obtaining clear title, acquiring pos-
16 session, and retaining possession of restricted prop-
17 erty and any other appropriate remedy;

18 (4) in carrying out paragraph (3), refer pro-
19 posed actions to be filed in the name of the United
20 States in a district court of the United States to the
21 United States Attorney for that district, and provide
22 assistance in an of-counsel capacity in those actions
23 that the United States Attorney elects to prosecute;
24 and

1 (5) appear specially before the Oklahoma Cor-
2 poration Commission on behalf of the Secretary to
3 protect Individual Indians' restricted property inter-
4 ests.

5 **SEC. 406. FILING REQUIREMENTS; CONSTRUCTIVE NOTICE.**

6 (a) REQUIREMENT FOR FILING.—The Secretary shall
7 file the following orders or other decision documents which
8 concern restricted property and are issued after the effec-
9 tive date of this Act by the Secretary in the appropriate
10 land titles and records offices, as designated by the Sec-
11 retary, and in the office of the county clerk in the county
12 where such restricted property is located:

13 (1) Any order or other decision document re-
14 moving restrictions, imposing restrictions, approving
15 conveyances, approving leases, approving voluntary
16 partitions, approving mortgages, probating wills, or
17 determining heirs, and approving orders of the Okla-
18 homa Corporation Commission.

19 (2) Any notice issued by the Secretary pursuant
20 to section 402.

21 (b) CONSTRUCTIVE NOTICE.—The filing of said doc-
22 uments pursuant to this section shall constitute construc-
23 tive notice to the public of the effect of said documents
24 filed.

1 (c) CERTIFICATION OF AUTHENTICITY.—The Sec-
2 retary shall have authority to certify the authenticity of
3 copies of such documents and title examiners shall be enti-
4 tled to rely on said authenticated copies for the purpose
5 of determining marketability of title to the property de-
6 scribed therein.

7 **SEC. 407. PUBLICATION OF DESIGNATED OFFICIALS.**

8 The Secretary shall identify each designee for pur-
9 poses of the receipt of notices or the performance of any
10 Secretarial duty or function under this Act by publication
11 of notice in the Federal Register.

12 **SEC. 408. RULE OF CONSTRUCTION.**

13 Nothing in this Act shall be construed to limit or af-
14 fect the rights of Individual Indians under other Federal
15 laws relating to the acquisition and status of trust prop-
16 erty, including without limitation, the following:

17 (1) The Act of June 18, 1934 (25 U.S.C. 461
18 et seq.) (commonly known as the “Indian Reorga-
19 nization Act”).

20 (2) The Act of June 26, 1936 (25 U.S.C. 501
21 et seq.) (commonly known as the “Oklahoma Indian
22 Welfare Act”).

23 (3) The Indian Land Consolidation Act (25
24 U.S.C. 2201 et seq.).

1 (4) Regulations relating to the Secretary's au-
2 thority to acquire lands in trust for Indians and In-
3 dian tribes.

4 **SEC. 409. TRANSMISSION OF POWER FROM INDIAN LANDS**
5 **IN OKLAHOMA.**

6 To the extent the Southwestern Power Administra-
7 tion makes transmission capacity available without replac-
8 ing the present capacity of existing users of the Adminis-
9 tration's transmission system, the Administrator of the
10 Southwestern Power Administration shall take such ac-
11 tions as may be necessary, in accordance with all applica-
12 ble Federal law, to make the transmission services of the
13 Administration available for the transmission of electric
14 power generated at facilities located on land within the
15 jurisdictional area of any Oklahoma Indian tribe (as deter-
16 mined by the Secretary of the Interior) recognized by the
17 Secretary as eligible for trust land status under 25 CFR
18 Part 151. The owner or operator of the generation facili-
19 ties concerned shall reimburse the Administrator for all
20 costs of such actions in accordance with standards applica-
21 ble to payment of such costs by other users of the South-
22 western Power Administration transmission system.

23 **SEC. 410. AUTHORIZATION OF APPROPRIATIONS.**

24 There is authorized to be appropriated such sums as
25 may be necessary to carry out this Act.

1 SEC. 411. EFFECTIVE DATE.

2 Except for section 409, the provisions of this Act
3 shall take effect on January 1, 2004.

Passed the House of Representatives June 11, 2002.

Attest: **JEFF TRANDAH**,
Clerk.

By MARTHA C. MORRISON,
Deputy Clerk.